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selling the same to a bona fide purchaser, repurchases it, he does not thereby acquire any better right against the maker than he possessed in the first instance.

3. Evidence—Presumptions—Refusal to Testify.—Where alleged facts are necessarily in the possession of a party, and he, when called as a witness, persistently and without any apparent reason refuses to disclose them, it may be presumed that such facts do not exist.

[Ed. Note.—For cases in point, see vol. 20, Cent. Dig. Evidence, §§ 95-100.]

4. Bills and Notes—Bona Fide Purchasers—Questions for Jury.—The question of whether a purchase of a note from a bona fide purchaser was made in good faith, or was made as agent for the payee in order to defeat a defense of the maker as against the payee, was for the jury, where the purchase was made four months after the maturity of the note, with the knowledge that it involved a lawsuit and was made at the suggestion of a principal stockholder of the payee, who was closely related to the purchaser, where it involved the disposition of securities by the purchaser, and where the latter, on being put on the witness stand, persistently refused to explain why he made the purchase.

HATTON *v.* MOUNTFORD et ux.

March 1, 1906.

[52 S. E. 847.]

1. Master and Servant—Contracts of Employment—Duties of Servant.—Where there is no express contract between an employer and an employee, imposing upon the latter a higher degree of skill and diligence in the discharge of his duties, only the ordinary and reasonable skill and diligence which is implied by law can be required of him, but, if he contracts for a higher degree of skill and diligence than the law implies, he must perform his duties with the skill for which he contracts, and cannot excuse himself for failing to do so by showing that he performed the duties of his position with the ordinary degree of skill and diligence required by law.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, § 67.]

2. Same.—A contract employing a music teacher which required the teacher to be loyal in the management of the school, to put forth his best efforts for the advancement of the music department, to unite in building up the institution, and to assist in maintaining discipline, required the teacher to give a higher degree and grade of service than is implied by law in the ordinary contract between master and servant.

3. Same—Discharge of Servant—Actions—Instructions.—A contract by which defendant employed plaintiff as a music teacher required the latter to aid in building up the school, to assist in main-

taining discipline, and to put forth his best efforts for the advancement of the music department, thus imposing on him the duty to exercise a higher degree of skill and diligence than is ordinarily implied by law in a contract between master and servant. Defendant was discharged by plaintiff, and in an action for the discharge there was evidence that defendant was inattentive to his duties, rude to pupils and other teachers, and had, in short, about destroyed the music department. The court attempted to cover the whole case by a charge to find for defendant if plaintiff by his negligence and discourtesy so conducted himself as to injure plaintiff's business by causing pupils to leave the school or to refuse to take music. Held, that the charge was erroneous in failing to bring to the jury's attention the point that plaintiff had contracted for a higher degree of skill and diligence than is ordinarily implied by law in the relationship of master and servant.

4. Trial—Instructions—Sufficiency—Presentation of Whole Case.—

An instruction given as covering the entire case should embrace material points in the case, although requested instructions presenting the individual points of the case are in themselves objectionable.

NORFOLK & W. RY. CO. v. TIDEWATER RY. CO.

March 1, 1906.

[52 S. E. 852.]

1. Railroads—Construction—Crossing Other Railroads—Proceedings before Commissions.—The State Corporation Commission, in inquiring into the necessity of the propriety of the location of a crossing by one railroad over the tracks of another, under Code 1904, § 1294b, cl. 3, acts in its capacity as a court of record, and, under section 1313a, cl. 23, of the Code, providing that the commission when so acting shall observe and administer the common-law and statutory rules of evidence, should not, except in rare cases, call witnesses not introduced by either party, and, if it does call such witnesses, should swear them as witnesses called by the parties are sworn.

2. Same—Appeal—Harmless Error—Admission of Evidence.—Error of the State Corporation Commission in admitting evidence is not ground for reversing their order in reference to the location of a railroad crossing, unless the other evidence in the case is not sufficient to support its finding.

3. Same—Notice of Proposed Crossing.—Under Code 1904, § 1294b, cl. 3, providing that, before a railroad which crosses another road commences to work upon such crossing, the general managing officer of the former road shall submit plans and specifications to the general officer of the latter, and the general officer of the latter may apply to the State Corporation Commission to inquire into the necessity of the crossing within 15 days after the service of notice of such plans,